

**IN THE CHANCERY COURT OF HARRISON COUNTY, MISSISSIPPI
SECOND JUDICIAL DISTRICT**

**IN THE MATTER OF THE STEWARDSHIP OF
THE PUBLIC TRUST TIDELANDS**

CIVIL ACTION NO. C2402-02-760

**SECRETARY OF STATE, ERIC CLARK,
TRUSTEE AND PETITIONER; CITY OF BILOXI,
A MUNICIPAL CORPORATION; BOARD OF TRUSTEES OF
STATE INSTITUTIONS OF HIGHER LEARNING IN ITS
OWN CAPACITY AND ON BEHALF OF THE
UNIVERSITY OF SOUTHERN MISSISSIPPI,
THE GULF COAST RESEARCH LABORATORY,
AND THE J. L. SCOTT MARINE EDUCATION CENTER;
ISLE OF CAPRI CASINOS, INC. AND RIVERBOAT
CORPORATION OF MISSISSIPPI, A MISSISSIPPI CORPORATION,
D/B/A THE ISLE OF CAPRI CASINO;
THE POINT CADET DEVELOPMENT CORPORATION,
A MISSISSIPPI NON-PROFIT CORPORATION, CO-PETITIONERS**

**THE CITY OF BILOXI'S SUPPLEMENT TO MOTION TO ENFORCE THE POINT
CADET COMPROMISE AND SETTLEMENT AGREEMENT, ADJUST THE
EQUITIES OF THE CO-TENANTS TO THE POINT CADET PROPERTY, AND
DECLARE H.B. 878 AN UNCONSTITUTIONAL IMPAIRMENT OF CONTRACTS
AND A TAKING OF CITY OF BILOXI'S PROPERTY RIGHTS**

COMES NOW, the City of Biloxi ("Biloxi") and files its Supplement to [Motion to Enforce the Point Cadet Compromise and Settlement Agreement](#), Adjust the Equities of the Co- Tenants to the Point Cadet Property and Declare H.B. 878 an Unconstitutional Impairment of Contracts and a Taking of Biloxi's Property Rights, and would respectfully show unto the Court as follows:

No higher duty, no more solemn responsibility, rests upon this Court, than that of translating into living law and maintaining this constitutional shield deliberately planned and inscribed

-- Justice Hugo Black, *Chambers v. Florida*, 309 U.S. 227, 241 (1940).

SUMMARY

Someone has attempted to pierce the Mississippi Constitutional shield that protects all of us. Biloxi seeks nothing more than to have this Court maintain the shield set forth in our Constitution. Biloxi perceives that the constitutional shield has been violated by: (a) someone, or group of persons, ignoring the Mississippi constitutional mandate that no appropriation or revenue bills shall be passed during the last five (5) days of the session; (b) someone, or group of persons, amending HB 878 after such bill was approved by the conference committee, with the post-enactment amendment being made adding the Point Cadet Leasing Fund by “unanimous consent” in the House and Senate Journals, apparently without the knowledge of many Coast legislators; and (c) by the actions of this unknown someone, or group of persons, violating Mississippi Senate Rule 52 and Mississippi House Rule 65 in order to add the Point Cadet Leasing Fund to H.B. 878.

SUPPLEMENT TO MOTION TO ENFORCE

1. Biloxi files this Supplement to its Motion to Enforce (Dkt. No. 25) to inform the Court that : (a) H.B. 878, as sent to the Governor, was adopted within the last five days of the session, in direct violation of Section 68 of the Mississippi Constitution of 1890; and (b) H.B. 878, as approved by both the House and Senate when each chamber voted on the H.B. 878 final Conference Committee report, is **not the same bill** signed by the Governor.

2. In the 2016 regular session, the Conference Report for House Bill No. 878, Section One (1), lines 25 through 33 [[Ex. “12” attached hereto](#)], designated four specific accounts administered by the Secretary of State's office from which the Conference Report directed the State Fiscal Officer to transfer \$18,000,000.00 to the Capital Expense Fund. The Conference Report was signed by the conferees and filed on April 18, 2016. *Id.* The Conference

Report did **not** include the account number for the Point Cadet Leasing Fund, which is #3311800000. Compare Ex. "12" to [Ex. "4"](#) attached to Biloxi's initial motion.

3. On April 19, 2016, the appropriate majorities of the membership of the House and Senate voted to adopt the Conference Report as filed by the conferees on April 18, 2016, without any reference to the Point Cadet Leasing Fund. Compare [Ex. "12"](#) and ["15."](#) However, on April 19, 2016 someone sent a MEMORANDUM [[Ex. "13"](#)] to the Clerk of the House of Representatives and the Secretary of the Senate, stating:

It is requested that unanimous consent be granted to make the following **clerical corrections**:

H.B. 878: Budget process; bring forward sections related to various aspects of

Amend on line 31 by inserting the following fund numbers:

3311000000

3311C00000

3311M00000

3311P00000

3311A00000

3311800000

Id. (emphasis added).

These six additional bank accounts are also administered by the Secretary of State, including the last one listed in the MEMORANDUM, account number 3311800000, which is the Point Cadet leasing fund. The MEMORANDUM does not state who requested unanimous consent to add the six accounts. The author of the MEMORANDUM and the person or persons requesting the MEMORANDUM (if not the same as the author) are unknown to Biloxi at this time.

4. The Senate Journal for April 20, 2016, ([Ex. "14"](#)) states, "it is requested that unanimous consent be granted to make the following **clerical corrections**:" (Emphasis added). Thereafter, the Senate Journal recites verbatim the amendment to H.B. 878 requested in the

phantom-authored [Ex. "13"](#), adding six accounts, including the Point Cadet Leasing Fund account. The Senate Journal does not state who requested the unanimous consent to add the six accounts.

5. Curiously, there is no record of any vote to amend H.B. 878 to include these accounts. [Exhibit "15"](#) is a page from the Mississippi Legislature's Bill Status website, illustrating the Legislative history of H.B 878. This legislative history shows **no action** by either legislative house on April 20, 2016. Likewise, this history states that, after the Conference Report was adopted on April 19, 2016, the next action was the signing (by legislative officers) of the enrolled bill on April 26, 2016, and thereafter the next action was the approval by the Governor on May 9, 2016. The enrolled H.B. 878 ([Ex. "4"](#)) sent to the Governor included the additional six accounts that were not in the Conference Report as adopted.

6. The phantom-authored memo, and Senate Journal entry, recite "clerical error" as the reason for the amendment. A "clerical error" is defined as "a mistake in writing or copying." *Black's Law Dictionary*, [pg. 252](#) (6th Ed. 1990). It is hard to believe the conference members signed legislation listing four accounts while they intended ten accounts to be listed. Clearly the addition of six bank accounts containing millions of dollars was not a "clerical error", but was an intentional, material, substantive amendment to the Conference Report.

7. Not only was there no "clerical error" but there was a violation of the House and Senate's own rules. Rule 52 of the Mississippi Senate Rules ([Ex. "19"](#)) mandates that, "Conference reports may **not be** (A) tabled, (B) referred to a committee, or (C) **amended.**" [Emphasis added.] Moreover, Rule 54 (7) of the Mississippi House Rules ([Ex. "20"](#)) states, *inter alia*: "A conference report **may not be amended except by concurrent resolution.**" [Emphasis added.] The House and Senate did not adopt a concurrent resolution to amend the Conference

Report. See [Ex. "15."](#)

8. Rule 65 of the Mississippi House Rules ([Ex. "21"](#)) states: "It shall be the duty of the Committee on Engrossed and Enrolled Bills to examine all engrossed and enrolled bills, correct all **mistakes** therein, and report the bills to the House...." [Emphasis added.] The Legislature's addition, in the enrolled bill sent to the Governor, of six bank accounts that had never appeared in the legislative history of H.B. 878 prior to the cryptic "unanimous consent" entry of "clerical corrections" in the Senate Journal on April 20, 2016, was not a correction of a mistake; it was a deliberate violation of the Rules of the House and Senate and a perversion of the legislative process.

9. Problems with the addition of the accounts did not go unnoticed. In an April 21, [2016 letter to the Governor](#), with copies to the Speaker, Lt. Governor and Director of the Department of Finance and Administration,¹ Doug Davis, Chief of Staff for the Secretary of State, specifically addressed each of the "clerical mistake" accounts (without calling them clerical mistakes) referenced in the April 19th MEMORANDUM ([Ex. "13"](#)) and the April 20th Senate Journal. Mr. Davis informed the Governor, and those copied on his letter, that the inclusion of the Point Cadet Leasing Fund in H.B. 878 "may violate the Point Cadet Compromise and Settlement Agreement...which requires the payment of funds collected from the leasing of Golden Nugget Casino to [City, et al.]." *Id.* at pg. 3. Five days later, on April 26, 2016, the altered H.B. 878 was sent to the Governor who signed the bill on May 9, 2016. See [Ex. "15"](#). Magically, there is no documentation showing where the House and Senate acted to concurrently amend the conference committee report. Clearly, someone's fiscal expediency overtook constitutional and rule of law requirements.

¹ The Court should note this letter is two days after the phantom-authored memorandum and one day after the Senate Journal "clerical mistake" entry.

10. By letter ([Ex. "17"](#)) dated April 28, 2016 addressed to Secretary Hosemann, Senator Eugene Clarke, Chairman of Appropriations, claimed that Doug Davis' letter of April 21, 2016, "identifies eleven sources of funds the **Secretary of State intends to draw down** in order to meet the \$18,000,000.00 transfer requirement of House Bill 878." [Emphasis added.] Senator Clarke's letter does not explain who requested and authored the MEMORANDUM of April 19, 2016, requesting unanimous consent to add the six accounts to H.B. 878 after it was adopted but before it was enrolled. On April 29, 2016, Secretary Hosemann sent a letter ([Ex. "18"](#)) to Mayor Gilich, claiming that, "the Mississippi Legislature is sweeping funds from the Point Cadet Leasing Fund....[t]herefore, these funds will not be paid to the City of Biloxi.

11. In addition to violation of House and Senate rules, Biloxi has referred to numerous constitutional problems. In this Supplement, Biloxi refers the Court to *Miss. Constitution of 1890*, Section 68:

Section 68. Appropriation and revenue bills shall, at regular sessions of the Legislature, have precedence in both houses over all other business, and **no such bills shall be passed during the last five (5) days of the session.**

The attached [Ex. "22"](#) is the first page of the final "Weekly Summary" on the official website of the Mississippi House of Representatives for the 2016 Regular Session, wherein it states that the House of Representatives adjourned "*Sine Die*" on April 21, 2016, being day 108 of the session; "a full three days early." The Senate Journal ([Ex. "23"](#)) states that the Senate adjourned "*Sine Die*" on April 24, 2016.

12. The purported amendment by "unanimous consent, made the effective date April 20, 2016, which was during the last five days of the session, thus violating *Miss. Constitution of 1890*, Section 68, and further demonstrating the unconstitutional conduct of the State.

13. In light of the foregoing acts of the State, the State does not enter this Honorable

Court with clean hands and should be estopped from denying the relief sought by the City, and the Court should declare H.B. 878, as signed by the Governor, to be unconstitutional.

WHEREFORE, pursuant to the foregoing and those matters set forth in Biloxi's Motion to Enforce (Dkt #25), Biloxi requests that the Court grant the relief set forth in its Motion and, in addition, declare that H.B. 878 as signed by the Governor, is unconstitutional, because the bill was not constitutionally enacted by the Legislature and the "amendment" to "correct clerical errors" was in violation of both the Mississippi Constitution and the House and Senate Rules.

This, the 5th day of May, 2017.

Respectfully submitted,

THE CITY OF BILOXI, MISSISSIPPI

BY: */s/ Michael E. Whitehead*

**MICHAEL E. WHITEHEAD, MSB #8891
PAGE MANNINO PERESICH
& McDERMOTT, PLLC
759 VIEUX MARCHE MALL (39530)
POST OFFICE BOX 289
BILOXI, MISSISSIPPI 39533
TELEPHONE: 228.374.2100
FACSIMILE: 228.374.3838
MICHAEL.WHITEHEAD@PMP.ORG**

And

/s/ Peter Abide

**PETER ABIDE, MSB #1026
CURRIE JOHNSON
925 TOMMY MUNRO DRIVE, SUITE H
BILOXI, MISSISSIPPI 39532
TELEPHONE: 228.385.1010
FACSIMILE: 228.385.1011
PABIDE@CURRIEJOHNSON.COM**

And

/s/ Gerald Blessey

**GERALD BLESSEY, MSB #3591
GERALD BLESSEY LAW FIRM
2577 CHATHAM COURT (39531)
POST OFFICE BOX 4648
BILOXI, MISSISSIPPI 39535
TELEPHONE: 228.806.4755
FACSIMILE: 228.388.7434
BLESSEYLAW@ME.COM**

Attorneys for The City of Biloxi, Mississippi

CERTIFICATE OF SERVICE

I, Michael E. Whitehead, of the law firm of Page, Mannino, Peresich & McDermott, PLLC, hereby certify that I have electronically filed the foregoing with the Clerk of the Court by using the MEC system, which sent notification to all parties who have appeared in this case. I further certify that I have on this day, mailed a copy of the foregoing by United States Postal Service, first class, postage prepaid, to the following:

Attorney General Jim Hood, on behalf of
The State of Mississippi
550 High Street
Jackson, Mississippi 39201

This, the 5th day of May, 2017.

/s/ Michael E. Whitehead

**MICHAEL E. WHITEHEAD, MSB #8891
PAGE MANNINO PERESICH
& McDERMOTT, PLLC
759 VIEUX MARCHE MALL (39530)
POST OFFICE BOX 289
BILOXI, MISSISSIPPI 39533
TELEPHONE: 228.374.2100
FACSIMILE: 228.374.3838
MICHAEL.WHITEHEAD@PMP.ORG**